

In the Matter of License No. 104377

Issued to: ROBERT M. HARPER

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

594

ROBERT M. HARPER

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 31 March, 1952, an Examiner of the United States Coast Guard at Norfolk, Virginia suspended License No. 104377 issued to Robert M. Harper upon finding him guilty of negligence based upon one specification alleging in substance that while serving as Master on board the American SS SHERMAN O. HOUGHTON under authority of the document above described, on or between 18 and 23 February, 1952, while said vessel was at sea, he failed to take reasonable precautions to safeguard one Millard M. Johnson, a fireman-watertender when it was apparent said Johnson was suffering from hallucinations and acting in an abnormal manner; and as a result said Johnson was lost at sea on 23 February, 1952.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by an attorney of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer made his opening statements and introduced in evidence the testimony of four witnesses from the vessel (Chief Engineer, First Assistant, and two able seamen) and excerpts from the vessel's official log book.

In defense, Appellant testified respecting the reasons why he did not confine Johnson before the latter disappeared at sea.

At the conclusion of the hearing the Examiner announced his findings and concluded that the charge had been proved by proof of the specification and entered the order suspending Appellant's License No. 104377 and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority for a period of twelve months, of which the first six months should be outright and the remainder on probation for eighteen months from 30 September, 1952.

From that order, this appeal has been taken, and it is urged:

1. The evidence does not support a conviction;
2. The Investigating Officer failed to call witnesses most likely to know the facts surrounding Johnson's condition and subsequent loss;
3. The Examiner failed to apply the proper standard of proof to the facts alleged; and
4. Appellant's actions were reasonable and adequate under the facts as he knew them.

APPEARANCES:

Messrs. Hughes, Little & Seawell (Thomas M. Johnston, Esq.)
Norfolk, Virginia, for Appellant.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

Between 18 and 23 February, 1952, Appellant was serving as Master on board the American SS SHERMAN O. HOUGHTON and acting under authority of his License No. 104377. Millard M. Johnson was a member of the crew as fireman-watertender.

On 18 February, while at sea, Johnson went to Appellant's room and stated that he was a naval intelligence officer; had been following a man for four voyages, and that the suspect was about to kill him. He refused to identify the suspect.

On 20 February, Johnson again went to Appellant and stated that he was hearing voices which accused him of being responsible for mariners screened by the Coast Guard; Johnson stated that he felt some person was about to kill him.

On 21 February, it was reported to Appellant that Johnson was giving away his personal effects because he would no longer need them. There is testimony that Johnson had indicated a disposition to hang himself; but he was readily dissuaded by a shipmate; this information was not reported to Appellant.

Johnson committed no act of violence; and it seems to have been assumed by his shipmates that he was slowly recovering from an extended stage of alcoholism.

On 23 February, at 0750, Johnson was seen on board; but at 0800, he was reported missing. After a thorough search of the vessel, Appellant retraced his course at 0830, but no sign of Johnson was found in spite of an extended and vigilant search.

OPINION

While shipmasters have well-defined responsibility, including timely and apt measures for protection of their crew members, in my opinion, the evidence in this case falls far short of establishing culpable fault or negligence against this shipmaster. Johnson had committed no violence to either his shipmates or himself. He had readily responded to the reasoning of his shipmates; and those who were in more close association with him than Appellant were reluctant to even suggest (much less recommend) his confinement. Mere delusions are not sufficient basis for commitment to an institution, 44 CJS p. 162, Sec. 64, note 31.

CONCLUSION

On the facts here, I am not satisfied there was a legal duty on Appellant to confine Johnson; and I think the charge should have been dismissed.

ORDER

The Order of the Examiner dated Norfolk, Virginia, on 31 March, 1952, is VACATED, SET ASIDE and REVERSED. The charge is DISMISSED.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 22nd day of July, 1952.